

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** FH-12-16(E) and FH-13-16

**Relating to:** Cisco (Lake Herring) Harvest in Lake Superior, NR 20 and 25

**Rule Type:** Both Permanent and Emergency

### 1. Finding/nature of emergency:

In order to preserve the welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses, as well as the welfare and sustainability of the cisco (lake herring) population in Lake Superior, the department finds that an emergency rule is necessary to implement rule changes for cisco harvest.

### 2. Detailed description of the objective of the proposed rule:

The proposed rules are needed to manage the long-term sustainability of the cisco population. In addition to potential rule changes related to gear, fishing effort, seasons, or other regulations, the rules would create new cisco harvest limits for commercial fishers and potentially for recreational anglers in Lake Superior. Currently the commercial harvest season is open year-round and there is no size limit or harvest quota in place for cisco. The recreational angling season is open year round in Lake Superior with a 10-fish daily bag limit per person and no size limit.

Cisco are a key species in the Lake Superior ecosystem, and are harvested in Wisconsin waters for commercial, recreational, and subsistence purposes by state licensees and members of the Red Cliff and Bad River Bands of Lake Superior Chippewa Indians.

Additional rule changes may be pursued which are reasonably related to those discussed here. Additional changes would be pursued to maintain a healthy cisco population, which is important for several reasons:

- Cisco are an important species for both sport and commercial harvest. Cisco contribute to the local economy through the tourism, guiding, charter and commercial fishing industries.
- Cisco are an important food chain link between trophic levels. They link the lower (zooplankton) to the upper (lake trout) trophic levels.
- Cisco reproduction is variable, with populations relying on strong year classes (fish born in the same year) to sustain them. This unpredictable year to year recruitment into the population can make cisco vulnerable to overfishing. Cisco are also important forage food for lake trout, a species which is also seeing a decline.
- A decline in cisco could have negative consequences on whitefish and other near-shore fish, because the eggs of cisco are an important part of other species' diets.
- The linkage between Wisconsin's waters and those of other jurisdictions are not totally understood. Some jurisdictions believe that harvest in Wisconsin waters acts as a driver for populations elsewhere in the lake.

Members of the Great Lakes Fishery Commission Lake Superior Committee, neighboring states, and sportfishing groups have expressed concern about the impact of unregulated cisco harvest in Wisconsin waters. Multiple news outlets have requested comment on the Department's plans to manage the cisco and respond to these concerns.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa are signatory to the Lake Superior Fishing Agreement, which specifies the allocation of annual lake trout quotas, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal fishing activities. The 2005-2015 Lake Superior Fishing Agreement was extended for one year while negotiations occur in 2016. These negotiations may result in new cisco harvest limits and other restrictions. Whether or not these negotiations result in agreed upon harvest limits, adjustments to limits in current Administrative Code must be made to help manage the overall population of cisco and ensure a sustainable cisco fishery over the long-term.

Cisco have historically been a commercially harvested species in Wisconsin. Commercial harvest of cisco in the Wisconsin waters of Lake Superior has increased dramatically since 2008, which is when commercial fish processors began accepting whole fish:

*Average Annual Harvest (Round Weight; State-licensed and tribal commercial harvest combined):*

- 2000 – 2007: 359,341 lbs.
- 2008 – 2014: 1,397,076 lbs.

*Actual Annual Harvest (Round Weight; State-licensed and tribal commercial harvest combined):*

- 2014: 1,197,628 lbs.

Between 1990 and 2005, Wisconsin's cisco harvest (combined state and tribal) comprised roughly one third of the total Lake Superior cisco harvest across all jurisdictions. More recently, Wisconsin's cisco harvest has risen to approximately two-thirds of the total Lake Superior harvest. The Department is concerned regarding the increase in harvest on a spawning aggregation of cisco and is evaluating overall management options.

The recreational harvest of cisco is minimal. Total harvest of cisco during 2015, estimated by creel survey, was 217 fish.

As noted, the proposed rules would create cisco harvest restrictions for commercial fishers and potentially for recreational anglers in Lake Superior, with potential for other related rule elements for cisco management. The rules would define how population assessments will be calculated, methodology to determine total and individual commercial harvest limits, gear restrictions, and reporting and monitoring requirements. Currently in Lake Superior, lake trout are the only commercially harvested species that have a harvest limit/quota in place. (Lake Michigan has quotas for five commercially harvested species.) Because the total and percentage of lake-wide harvest of cisco has increased in recent years, it is necessary to implement rule elements that distribute harvest fairly among stakeholders within Wisconsin and with other states. Alternatively, cisco are vulnerable to overfishing if no harvest restriction is implemented, which could result in population declines for cisco and other popular fish species and negative consequences for small commercial fishing and charter businesses.

### **4. Detailed explanation of statutory authority for the rule:**

Section 29.014(1), Stats., directs the Department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the Department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519(1m)(b), Stats., grants discretion to the Department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. It also specifies that the limitations on harvests must be based on the available harvestable population of fish and in the wise use and conservation of the fish, so as to prevent over-exploitation.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

Employees will likely spend more than 300 hours developing the emergency rule and permanent rules, including travel time to meet with the Red Cliff and Bad River Bands of Lake Superior Chippewa and meetings with the Lake Superior Commercial Fishing Board.

**6. List of all entities that may be affected by the proposed rule:**

- State-licensed commercial fishers on Lake Superior
- Tribal-licensed commercial fishers on Lake Superior
- Recreational fishers on Lake Superior
- Related fishing businesses such as recreational fishing guides and charter fishing businesses

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

No federal regulations apply. None of the rule proposals violate or conflict with federal regulations.

**8. Anticipated economic impact of implementing the rule:**

The rules could have an impact on the harvest of cisco by commercial fishers and recreational fishers. These groups that fish in Lake Superior could have a reduction in overall harvest. The rules imposing harvest restrictions are necessary in order to ensure a sustainable cisco fishery over the long-term that provides an economic and natural resource benefit for all affected. The permanent rule may have a moderate economic impact (Governor's Executive Order 50, level 2 economic impact analysis above \$50,000 but less than \$20 million), but an exact amount of impact is unknown at this time. If a permanent rule is pursued, the Department will conduct an economic impact analysis to gather comments from any individuals, businesses, local governments, or other entities that expect to be affected economically by the rule change.

Average state-licensed commercial fishers' annual catch between 2010 and 2015 was 960,991 pounds of cisco. In 2015, the cisco price per pound was \$0.40-0.65, but has been as high as \$1.20 per pound since 2012. While the price per pound has varied over time, estimated total value of the commercial cisco roe fishery is between \$500,000 and \$1,000,000 per year. The methods in the rules for determining harvest restrictions are expected to allow commercial fishers to harvest at or near the current average annual catch amount. Therefore, the rules may have minimal to moderate economic impact on commercial fishing businesses. Outside of the rules, market demand and fuel and other variable expenditures would have a greater economic impact. The rules will allow the Department to reduce or increase the harvest limit based on assessment data and recommended harvest parameters.

Harvest reporting requirements would be included in the rules, similar to current bimonthly reporting requirements for January through September. Additional onboard records and daily phone reporting may also be required during the cisco spawning season October through December. The combination of bimonthly reports and daily phone reports would allow for tracking of overall and individual allotments of the harvest limits with up to date records during the time of year with the majority of harvest.

Recreational fishers may be affected if there is a change in the cisco season, daily bag limit, or size limit in order to reduce overall harvest. If so, that is not expected to cause any expenditures for recreational fishers. The proposed rules may have an indirect effect on fishing guides and charter fishing businesses.

**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding a public hearing in the fall of 2016 in Ashland for the emergency rule. Hearing locations and times for a permanent rule will be determined.

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                  /S/ Kurt Thiede                    
Department Head or Authorized Signature

                  5/31/16                    
Date Submitted